IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3316 of 1994
with
SPECIAL CIVIL APPLICATION No. 3317 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBERDI SEVA SAHAKARI MANDLI LTD

Versus

REGISTRAR & BOARD OF NOMINEES OF CO-OP. SOCIETIES

Appearance:

1. Special Civil Application No. 3316 of 1994
MR DP KINARIWALA for Petitioner
Respondent No. 1, 2 & 5 :: Served
MR MEHUL S SHAH for Respondent No. 3-4

2. Special Civil Application No. 3317 of 1994
MR DP KINARIWALA for Petitioner
Respondents :: SERVED

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/03/2003

COMMON JUDGEMENT

Both these petitions involve similar issue and are disposed of by this common order.

The petitioner in both these petitions is Amberdi Seva Sahakari Mandali Limited, a Credit Cooperative Society [hereinafter referred to as, "the Society"]. The respondent no. 3 in Special Civil Application No. 3316 of 1994 is the Loanee and the respondents nos. 4 & 5 are the sureties. The respondent no. 3 in Special Civil Application No. 3317 of 1994 are the heirs and legal representatives of the deceased loanee.

It appears that at the relevant time, there were certain outstanding dues of the respective loanee to the Society. The Society was under the administration of the Administrator appointed under section 81 (1) of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as, "the Act"]. The Administrator instituted Arbitration Suits Nos. 107 of 1991 and 108 of 1991 against the respective loanee for recovery of the outstanding dues and the interest thereon. Since the filing of the said suits, under order dated 30th March, 1992 made under section 81 (3) of the Act by the District Registrar of the Cooperative Societies, the appointment of the Administrator was cancelled and the management of the Society was handed over to the duly elected Managing Committee. However, the aforesaid two suits were not attended to by the Society. Hence, both the suits were dismissed by the Board of Nominees on 20th January, 1993. Feeling aggrieved, the Society preferred Appeals No. 268 of 1993 and 269 of 1993 before the Gujarat State Cooperative Tribunal. Both the appeals were delayed by 90 days. The Society, therefore, filed applications for condonation of the delay. Both the said applications and appeals were dismissed by common order dated 3rd November, 1993. Feeling aggrieved, the Society has preferred the present petitions.

Mr. Kinariwalla has submitted that the suits were filed by the Administrator. The Managing Committee was elected after the date of the filing of the suit. Hence, the Society was not aware of the factum of the pending suits and could not attend the suits pending before the Board of Nominees. The Society, however, learnt about the dismissal of the said suits on 13th May, 1993 and immediately on 14th May, 1993, made application for certified copy of the order. On receiving the

certified copy of the order, the Society preferred appeals in question. In the submission of Mr. Kinariwalla, the date of the knowledge is the relevant date when the period of limitation commences. Thus, there was no delay in preferring the appeals. However, even if there were any delay, there being no negligence on the part of the Society, the same ought to have been condoned and the appeals ought to have been allowed.

Mr. Shah has contested the petition. Mr. Shah has submitted that the Society has not come before this Court with the true facts. He has submitted that the judgment of the Board of Nominees was dispatched to the Society on 25th February, 1993 by registered post. It is, therefore, presumed that the copy of the order was duly served upon the Society. The Society has not disclosed that it had received the copy of the order sent by the Board of Nominees. Even if it is believed that the Society did not receive the said copy and the Society had no knowledge till 13th May, 1993; as claimed, the Society has failed to disclose the source of information. Hence, it should be inferred that the Society has not come with the true and complete facts. The Tribunal has rightly rejected the applications for condonation of delay.

Though before the Tribunal it was specifically contended that the order of the Board of Nominees was dispatched to the Society on 25th February, 1993 by a registered post, the Tribunal has not given a clear finding whether such dispatch was made or not. It is also true that the Society has not disclosed the source of information i.e., how on 13th May, 1993, the Society came to know about the factum of the filing of the suits and the dismissal thereof. However, keeping in view the fact that the Society is an impersonal body, I am of the opinion that the delay of 90 days caused in preferring the appeal ought to have been condoned. The appeals also ought to have been allowed with the result that the suits filed by the society could have proceeded on merits.

In the circumstances, both these petitions are allowed. The impugned order dated 3rd November, 1993 passed by the Tribunal in Appeals Nos. 268 of 1993 and 269 of 1993 is quashed and set-aside. The delay in question is condoned. Both the appeals nos. 268 of 1993 and 269 of 1993 are allowed. The impugned orders of the Board of Nominees dated 28th January, 1993 dismissing the Arbitration Suits nos. 107 of 1991 and 108 of 1991 also are quashed and set-aside. The Arbitration Suits Nos. 107 of 1991 and 108 of 1991 shall stand restored on the

files of the Board of Nominees. The Board of Nominees shall proceed further with the trial in accordance with law. Both the parties shall scrupulously remain present before the Board of Nominees and attend the suits. Rule is made absolute. The petitioner shall bear the costs of this petition. The advocate's fees for the purpose of costs to the respondents nos. 3 & 4 in Special Civil Application No. 3316/1994 is quantified at Rs. 10,000/=.

The registry shall maintain copy of this order on each of these petitions.

[Ms. R.M Doshit, J.]

Prakash*